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SUBJECT: Vienna Appellate Court Suspends Remaining Sentence for  
British Historian David Irving

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1.(U) In the Holocaust denial case of British historian David Irving, the Vienna state appellate court suspended two thirds of Irving's 3-year prison sentence on December 20. In February 2006, a Vienna court had convicted Irving to a three-year prison sentence on charges of violating Austrian law banning neo-Nazi activity. In public speeches he had held in Austria in 1989, Irving had repeatedly denied the existence of gas chambers in the Auschwitz concentration camp, and denied the persecution of Jews under the Nazi regime.

2.(U) The appellate court ruled that, because Irving had demonstrated proper behavior in the 17 years since the public speeches in 1989, he could serve two thirds of his sentence on probation. Since Irving had been in custody since November 11, 2005, he was released from prison on December 20, but subsequently put in detention pending deportation. The Interior Ministry has already contacted the British authorities to implement the deportation.

3.(U) The Austrian Jewish Community (IKG), the Social Democratic Party (SPO) and the Green Party criticized the decision. The IKG emphasized that the ruling "set the wrong signal" coming just after the Holocaust denial conference in Tehran. A particular point of criticism was the fact that Irving had in an interview he gave from prison in March 2006 again stated that there was "no proof for organized mass murder" during the Holocaust. The presiding judge in the appellate trial, Ernest Maurer, characterized that statement a "shock reaction" to the sentence. While the case against Irving based on the March 2006 interview is still pending, the Vienna public prosecutor saw insufficient grounds for putting Irving in pre-trial detention pending investigation.

Comment

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4.(SBU) Irving's three-year prison sentence in February 2006 had triggered a debate in Austria whether the law banning neo-Nazi activity, which stipulates sentences of up to ten years, is still appropriate for Austrian society today. Critics argued that Austria had matured to a democratic, open society respecting human rights, and that the unique Austrian provisions on neo-Nazi activity. had become obsolete in comparison with freedom of speech.

5.(SBU) Critics of the appellate court's ruling pointed to judge Maurer's right wing political leanings. SPO Justice spokesman Hannes Jarolim has called up the courts to exclude judges who have no sensitivity toward Holocaust denial from cases involving charges of neo-Nazi activity.  
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